

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	09/809,468	Confirmation No. 5503
Applicants	:	Michael Wholey et al.	
Filed	:	March 15, 2001	
Title	:	METHOD AND APPARATUS FOR MEDICAL DEVICE FOR ASPIRATION OF THROMBOEMBOLIC DEBRIS	
TC/A.U.	:	3761	
Examiner	:	Leslie R. Deak	
Docket No.	:	MICW 48751	
Customer No.	:	29694	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

July 23, 2007

Sir:

This Pre-Appeal Brief Request for Review is submitted in response to the final Office Action of January 22, 2007 and the Advisory Action of July 10, 2007.

Remarks/Arguments begin on page 2 of this paper.

Remarks/Arguments

This Pre-Appeal Brief Request for Review is submitted in accordance with the requirements set forth in the Official Gazette of July 12, 2005. Applicants present the following reasons for seeking review.

Omission of an Element Necessary to Establish a *Prima Facie* Rejection

Applicants respectfully submit that the final rejection fails to establish that the applied prior art references render obvious all of the claimed limitations under 35 U.S.C. § 103(a). Claims 1-5 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hein '786 in view of Stannard et al. '042. The final Office Action acknowledges that Hein '786 fails to disclose an apparatus with porous paddles. Stannard et al. '042 is relied upon as teaching a filter apparatus with a porous filter bed (26) and paddles or blades (44) that agitate the fluid in the filter chamber and scrape the particulate material from the filter bed. The final Office Action states that:

The paddles have a front and a back surface (see FIG 6) and horizontal holes 160 drilled in the blade 152 (see FIG 10) in order to assist in removal of filter cakes from the apparatus (see column 6, lines 15-20).

The Office Action further states that:

Stannard clearly illustrates a paddle or blade 152 that comprises a thickness (see FIG 6), with pores 160 that extend through the thickness (see FIG 10), meeting the limitations of the claims.

According to the Examiner:

it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the agitating means or paddles disclosed by Hein with porous surfaces and a rotator shaft as disclosed by Stannard in order assist in removal of filter cakes from the apparatus, as taught by Stannard (see column 6, lines 15-20).

The Advisory Action further states that:

Applicant further argues that the porous blades disclosed by Stannard fail to meet the requirements of claim 1. Applicant asserts that the paddle of Stannard defines a front surface 154 and rear surface 156, and holes do not extend from the front to the rear. However, examiner never set forth such an interpretation of the front and rear surfaces of the paddle. In fact, Stannard discloses that the view of the blades in FIG 6 is a plan, or overhead view, and the paddle shown in FIG 10 is a lateral view. The lateral view illustrates that the holes 160 extend laterally through the plate of the scraper blade. Applicant's arguments conflict with the plain disclosure of the reference.

The Examiner has failed to explain where in the apparatus of Stannard et al. '042 the following elements are located: (1) the front surface of a paddle or blade; (2) the rear surface of the paddle or blade; (3) the thickness of the paddle or blade; and (4) pores extending through the thickness from the front surface to the rear surface of the paddle or blade.

Hein '786 discloses a laboratory pressure filtering device for fluids which includes a small magnetic stirrer driven by a rotating magnet underneath the filtration unit. Stannard et al. '042 discloses a filtering device for wastewater treatment sludges including a rigid filter bed and a scraper blade assembly which rotates above the filter bed to lift portions of filter cake from the bed. In the embodiments shown in Figs. 7-10 of Stannard et al. '042, the scraper blades include at least one porous plate and an underlying chamber in the blade in which a vacuum is applied to remove liquid from the filter cake that is deposited on the porous plate.

The combination of Hein '786 and Stannard et al. '042 proposed by the Examiner would not result in the presently claimed apparatus because if the scraper design taught by Stannard et al. '042 was used in place of the magnetic stirrer 5 of Hein '786, such a combination would not include a paddle assembly as recited in Claim 1 comprising at least one paddle having front and rear exterior surfaces defining a thickness of the paddle and pores extending through the thickness of the paddle from the front surface to the rear surface of the paddle.

Fig. 6 of Stannard et al. '042 is a top view of a filter apparatus including two scraper blades 88 which rotate in a cylindrical tank 82. The Examiner generally states that the blades shown in Fig. 6 have a front and a back surface without explaining exactly where those surfaces are, and relies on Fig. 6 as showing the thickness of each blade.

The Examiner relies on Fig. 10 of Stannard et al. '042 as showing horizontal holes 160 drilled in a blade 152. According to the Examiner, a pore 160 extends through the thickness of the blade 152. However, the Examiner provides no explanation of how the pore extends from the front surface to the rear surface of the blade.

The hole 160 of Stannard et al. '042 does not extend through the thickness of the blade from its front surface to its back surface. Instead, the hole 160 extends radially outwardly along the blade, and does not extend from a front to a rear surface of the blade. The final Office Action has not established a *prima facie* case of obviousness because the Examiner has not identified any front or rear surface of a blade that define a thickness of the blade, in combination with pores that extend from the front surface to the rear surface through the thickness of the blade. Therefore, the rejection of Claim 1 and the claims that depend therefrom based on Hein '786 in view of Stannard et al. '042 is improper and should be withdrawn. The remaining references applied in the final Office Action do not remedy the above-noted deficiencies of Hein '786 and Stannard et al. '042.

Review and reconsideration of the final rejection, and allowance of the application, are respectfully requested.

Respectfully submitted,



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